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June 16, 2009

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: March 12, 2009

Case Number: TSO-0713

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should not be restored at this time. 1/

I. BACKGROUND

In August 2007, the DOE conducted a Personnel Security Interview with the individual (the 2007 PSI) regarding his misuse of alcohol. In addition, the individual was evaluated in August 2008 by a DOE-consultant psychologist (the DOE-consultant Psychologist), who issued a Psychological Evaluation Report (the "2008 Report")

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1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

setting forth his conclusions and observations. DOE Exhibit 7. 2/

In November 2008, the Manager of the DOE area office where the individual is employed (the Manager) suspended the individual's access authorization and, on January 22, 2009, he issued a Notification Letter to the individual. DOE Exhibit 3. Enclosure 1 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Section 710.8(j) of the regulations governing eligibility for access to classified material (Criterion J). Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse."

With respect to Criterion J, Enclosure 1 states that in the opinion of the DOE-consultant Psychologist, the individual "is a habitual abuser of alcohol who is in significant denial about the consequences of his drinking" and that he "is credibly diagnosed with a medical condition of alcohol abuse." Enclosure 1 also refers to the DOE-consultant Psychologist's findings that the individual (i) admits to regularly driving while close to the legal limit (for blood alcohol content) or intoxicated; (ii) copes with day-to-day stress by drinking, but does not see this as a problem; (iii) for more than fifteen years, has consumed five to six beers per day most days of the week, an amount that "exceeds the range of drinking that would be considered 'social' by the addictions professional community"; and (iv) is unwilling to acknowledge that being intoxicated in a bar raises a security concern. See Enclosure 1 to Notification Letter, DOE Exhibit 3.

Prior to the hearing, the DOE-consultant Psychologist submitted additional comments aimed at clarifying the basis for his diagnosis. In an e-mail to the DOE Counsel in this proceeding dated March 25, 2009, the DOE-consultant Psychologist stated that in his opinion the individual meets the DSM-IV TR criteria for "Alcohol Abuse". In addition to citing the concerns listed above as bases for this diagnosis, he finds that the individual continues to drink to excess despite being severely diabetic and aware of the

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2/ The individual had previously been evaluated in February 2008 by a different DOE-consultant psychologist for the purpose of assessing his eligibility for accelerated access authorization processing. See February 28, 2007, Psychological Evaluation Report (the "2007 Report"), Individual's Exhibit D.

"incontrovertible medical . . . vulnerability" posed by his alcohol consumption. March 25, 2009 email at 2.

## II. *THE MAY 2009 HEARING*

At the individual's request, a hearing was convened in May 2009 to afford him an opportunity to submit information to resolve these concerns. At the hearing, testimony was received from seven persons. The DOE presented the testimony of the DOE-consultant Psychologist. The individual, who was represented by counsel, testified and presented the testimony of an examining psychologist (the individual's Examining Psychologist), the individual's clinical counselor (the individual's Counselor), his supervisor from 1997 until 2001 and from 2004 to the present, a longtime friend and co-worker (the friend/co-worker), a friend who worked as a part-time bartender at the social organization where the individual is an active member and officer (the friend/part-time bartender), and a full-time bartender from the individual's social organization (the full-time bartender).

The hearing testimony focused on the opinions of the DOE-consultant Psychologist and the Examining Psychologist concerning the individual's diagnosis and his rehabilitation efforts, and on documenting the individual's alleged period of abstinence from alcohol beginning on February 5, 2009. The individual's counsel submitted a written Closing Argument, which I received on May 13, 2009.

## III. *APPLICABLE STANDARDS*

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security

clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

#### IV. ANALYSIS OF TESTIMONY AND FINDINGS

##### A. Diagnosis

In his testimony at the hearing, the DOE-consultant Psychologist did not revise his diagnosis of Alcohol Abuse, and indicated that the individual should be actively engaged in recovery activities to avoid a future relapse. TR at 146-150. The individual's Examining Psychologist testified that the individual abused alcohol for a long period of time, and that Alcohol Abuse was a proper diagnosis. TR at 29, 35. The individual's Counselor stated that the individual acknowledged to her that he consumed five to six beers a night for many years, and that he now recognizes that he must abstain from alcohol for health and employment reasons. TR at 92. While she did not offer a specific diagnosis, she stated that the individual admitted to her that in the past he has rationalized his excessive use of alcohol, and that she intends to provide the individual with chemical dependency counseling and to discuss the benefits of sobriety programs such as Alcoholics Anonymous (AA). TR at 97, 101-102. Based on this testimony, I conclude that there is no dispute among the expert witnesses that in 2008 the individual was properly diagnosed as suffering from Alcohol Abuse. In addition, I have reviewed the information in the record of this proceeding concerning the individual's history of alcohol consumption and conclude that there is ample support for this diagnosis. I therefore turn to the issue of whether the individual has demonstrated rehabilitation from this condition.

*B. The Individual's Assertions Regarding His Past Use Alcohol and Current Abstinence*

The individual testified that he last consumed alcohol on February 4, 2009, the day before he received the DOE's Notification Letter. TR at 131. He stated that he first became aware that the DOE was concerned that he was abusing alcohol when he read the Notification Letter. He testified that he now knows that he abused alcohol in the past, through discussions with his Examining Psychologist and his Counselor. TR at 112.

The individual testified that prior to February 5, 2009, he would consume alcohol four to five nights a week, primarily at a social club where he is an active member and officer (the Social Club). TR at 113, 126. He stated that he did not enjoy drinking at home, and that he did not go to any other bars. TR at 113. He stated that he continues to go to the Social Club several nights a week for three to four hours to socialize and to perform administrative tasks, but that he now consumes non-alcoholic drinks such as unsweetened iced tea or diet soda. TR at 125-126.

The individual stated that he now is committed to abstaining from alcohol to protect his health from his chronic diabetic condition that was diagnosed in childhood. He testified that in the last dozen years he has suffered profound medical complications from diabetes that have resulted in physical handicaps, and was hospitalized with diabetic complications in April 2009. TR at 114-119. The individual stated that he sometimes misses alcohol, but that he has not been seriously tempted to drink again, and that he does not feel pressured to consume alcohol at his Social Club. TR at 117.

The individual testified that he intends to continue meeting with his Counselor as support for his sobriety. He stated that she has not yet discussed the benefits of AA with him, but that he would be willing to attend AA meetings "and see what they are about." TR at 119. The individual reported to the DOE in February 2007 that the last time he was heavily intoxicated occurred in November 2006 when he and two friends watched a college football game together. See 2007 Report, Individual's Exhibit D at 5. At the hearing, he stated that this was a birthday/football party that he attends every year, and that in the future he will attend the party but will not consume alcohol. TR at 122-123.

### C. Corroboration of Recent Abstinence

At the hearing, the individual submitted testimony and evidence to corroborate his recent sobriety. The full-time bartender at the Social Club testified that for the past year, she has worked at the Social Club from 3:00 p.m. until 11:00 p.m., Monday through Friday. She stated the individual is the Social Club secretary and a regular customer. TR at 138. She testified that at the beginning of February 2009, the individual stopped consuming alcohol, and that she has not seen him consume alcohol since then. She stated since February, she continues to see the individual at the Social Club "pretty much every day that I'm here," except for a period of time when he was in the hospital. TR at 140, 143.

The individual's friend/part-time bartender testified that she has worked at the Social Club on Saturdays as a part-time bartender for about three years. She stated that a little more than a year ago, she and the individual became friends and started going out together for lunch or dinner. TR at 72-73. She stated that around the beginning of February 2009, the individual completely stopped consuming alcohol. She reported that, as an officer at the Social Club, he would spend a lot of time there on Saturdays doing paperwork, and that he now orders unsweetened tea, diet soda, and water. TR at 74. She stated that prior to February 2009, the individual rarely consumed alcohol when they dined out together, because most restaurants in their area do not serve alcohol. TR at 81. She stated that she has not seen him consume any alcohol since the beginning of February 2009, either at the Social Club or when they have dined out together. TR at 81-82.

The individual's friend/co-worker testified that he has known the individual for many years. He stated that one or two times a week he visits the Social Club and converses with the individual, and that they also occasionally socialize in each other's homes or at the homes of friends. TR at 60. He stated that the individual has been an active officer in their club for several years, and spends a lot of time there. TR at 62-63. He testified that in "the February time frame", the individual stopped consuming alcohol, and he has not seen him consume alcohol since then. TR at 63, 68. He stated that since February 2009, he has visited with the individual at the Social Club a couple of times a week. TR at 68. Finally, the individual's supervisor testified that the individual has worked for him for several years, and that he has never had cause for concern about the individual's alcohol consumption. TR at 50-52. He stated that the individual told him that he had stopped drinking alcohol. He stated that he could not remember when that

conversation took place, but guessed it to be "a couple months ago." TR at 52.

Based on this testimony, I find that the individual has effectively corroborated his assertion that he has not consumed alcohol since he received the Notification Letter on February 5, 2009. Although the individual lives alone, he spends most week nights, as well as Saturdays at his Social Club, and the testimony of the full-time bartender, the friend/part-time bartender, and the friend/co-worker have corroborated that he stopped consuming alcohol at the Social Club in early February 2009. Their testimony indicates that the individual has consistently practiced abstinence in the social environment where he spends most of his leisure time, where alcohol is readily available, and where his self-reported excessive drinking previously took place. I find this corroborative evidence to be adequate for the claimed three-month period. Accordingly, I conclude that the individual has established that he last consumed alcohol on February 4, 2009, and that as of the date of the hearing has been abstinent from alcohol for three months.

#### *D. Rehabilitation and Risk of Relapse*

In addition to abstaining from alcohol for three months, the individual has initiated a counseling relationship to support his abstinence. His Counselor testified that she has met with the individual twice, beginning on April 22, 2009. TR at 89. <sup>3/</sup> She stated that she will provide the individual with chemical dependency education, relapse prevention training, and cognitive behavioral therapy. She stated that she has found the individual to be very open and interested in the counseling. She stated that the individual has told her that he is committed to sobriety for health reasons as well as employment reasons, and that she believes that this commitment is very high. TR at 90-92. She stated that her counseling program usually lasts for at least twelve weekly sessions, and can continue longer than that. TR at 96. She testified that she intends to recommend to the individual that he begin attendance at AA and become acquainted with that program, which she believes will help him avoid a potential relapse in the future. TR at 102. She stated that the individual currently represents a low risk of relapse due to his health and employment concerns. TR at 92.

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<sup>3/</sup> The individual testified that his illness and hospitalization in early April 2009 delayed the start of his alcohol counseling. TR at 119.

The individual's Examining Psychologist testified that he evaluated the individual in late March 2009, and that the individual reported being very pleased with the health benefits and greater alertness produced by his abstinence from alcohol. TR at 32. He stated that he believes that the individual has both the internal resources and motivation to remain in recovery. TR at 34. He stated that the individual's abuse of alcohol was a borderline condition lasting many years, which enabled him to meet his social and professional obligations and to mentally minimize the risks that his alcohol consumption posed to his health and to his employment. TR at 37-38. He testified that now that the individual has acknowledged his problem with alcohol, he is committed to abstinence, and his current risk of relapse is "very, very low", based upon his willingness to move into recovery and the fact that his life has never been "wrapped around the use of alcohol." TR at 39-40, 44. The Examining Psychologist acknowledged that participation in an ongoing program such as AA would be in the individual's best interest. TR at 42. He stated that in order for the individual to maintain his current low risk of relapse into the future, he needs to develop a support system consisting of either a counseling relationship or an ongoing commitment to the AA program. He also stated that periodic unannounced alcohol monitoring by the individual's employer would serve as a deterrent to future alcohol use. TR at 158.

After hearing the evidence presented by the individual and his witnesses, the DOE-consultant Psychologist testified that the individual had made a "good start" at mitigating the DOE's alcohol concerns, because he now takes those concerns seriously. TR at 144-146. He stated that, in the short term, the individual's risk of relapse is low. TR at 147. However, he stated that unless the individual adopts sobriety as a lifestyle, his chances of maintaining abstinence from alcohol in the long term are not low or moderate. TR at 146. The DOE-consultant Psychologist testified that his work in the addiction field has convinced him that very bright individuals whose professional standing is at risk will nevertheless return to addictive behavior if they are not in an ongoing committed recovery program. TR at 148. He stated that the individual's current counseling relationship will be useful if it helps the individual to understand AA and become identified with AA. He testified that for the individual to demonstrate that his long-term risk of relapse is low, he needs "probably three years" of demonstrated participation in AA, which includes a commitment to a "home" AA group and a relationship with an AA sponsor. TR at 149-150. The DOE-consultant Psychologist stated that three years in AA allows someone to get past the enthusiasm and novelty of first year sobriety, and to begin to take on responsibility for



other people by becoming a mentor or a sponsor. He stated that he performs evaluations for a state professional assistance program, and that this program typically requires three years of recovery for professionals seeking to demonstrate rehabilitation from alcohol addiction and a low risk of relapse. He stated that he believes that a year of sobriety is insufficient, especially when there has been a life-long drinking history. TR at 151-155.

Overall, I was convinced by this expert testimony. See, e.g., *Personnel Security Hearing*, Case No. VSO-0015 (1995) (Hearing Officer gave deference to expert medical opinion in finding that rehabilitation was not established). The individual's Counselor, his Evaluating Psychologist and the DOE-consultant Psychologist all agreed that the individual's current risk of relapse is low, but that in the long term he must commit himself to sobriety activities such as alcohol counseling and/or a sobriety program in order to maintain a low future risk of relapsing into the abuse of alcohol. In this instance, my positive assessment of the individual's demeanor and of the evidence presented at the hearing convinces me that the individual is highly committed to maintaining his current abstinence, and that he has initiated a counseling relationship that should assist him in developing the personal skills to maintain abstinence and in understanding the benefits of participating in a sobriety program such as AA.

Currently, however, the individual has maintained abstinence from alcohol for only three months, has attended only two sessions with his Counselor, and has not yet participated in an ongoing sobriety program such as AA. While the Examining Psychologist and the DOE-consultant Psychologist disagree on the period of time that will be necessary to establish rehabilitation in this case, I find that the individual's current three months of abstinence with minimal recovery activity clearly is not adequate for this purpose, and that the individual has not yet established that his long-term risk for relapsing into alcohol abuse is low. <sup>4/</sup> Accordingly, I find that the individual has not yet resolved the DOE's Criterion J concerns.

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<sup>4/</sup> In this regard, I note that medical professionals often find that a full year of abstinence and alcohol treatment is necessary to establish rehabilitation, because a one year period allows an individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. See *Personnel Security Hearing*, Case No. TSO-0150 (2005).

## V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from Alcohol Abuse subject to Criterion J. Further, I find that this derogatory information under Criterion J has not been mitigated by sufficient evidence of rehabilitation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual's access authorization should not be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: June 16, 2009